

No. 13031

United States
Court of Appeals
for the Ninth Circuit.

SAM ZALL, an Individual Doing Business as Sam
Zall Milling Company,
Petitioner,
vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,
and

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

SAM ZALL, an Individual Doing Business as Sam
Zall Milling Co.,
Respondent.

SUPPLEMENTAL
Transcript of Record

Upon Petition to Review and Petition for Enforcement
of Order of the National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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CHARLES ADAMS

a witness called for and on behalf of the General Counsel, after being first duly sworn, was examined, and testified as follows:

Direct Examination

By Mr. Law:

Q. What is your full name, Mr. Adams? Just with the middle initial.

A. Charles H. Adams.

Q. And what is your address, Mr. Adams?

A. Pepper Street, in Sutter City.

Q. Are you employed by the Sam Zall Milling Company? A. Pardon?

Q. Are you employed by the Sam Zall Milling Company? A. Yes.

Q. For how long have you worked for them?

A. It was a year ago this month.

Q. And what is your job? [83*]

A. Sack filler.

Q. I will show you a card which has been received in evidence as General Counsel's Exhibit No. 5(a), and I will ask you if that is a card which you signed yourself? A. —

Trial Examiner Miller: Let the record show that the witness nodded in the affirmative.

The Witness: You mean is the card I signed?

Q. (By Mr. Law): Yes. A. Yes.

Q. Is this your signature at the lower left-hand corner? A. Yes.

(Testimony of Charles Adams.)

Q. And did you sign the card on October 2, 1950, the date it bears? A. Yes.

Q. All right.

Now, I will show you another document, a copy of which has been received in evidence as General Counsel's Exhibit No. 6, and I will ask you if you signed the original of that? A. Yes, sir.

Q. Is this your signature, the next to the bottom one on the right-hand side? A. Yes, sir.

Q. Now, did you sign this document, General Counsel's Exhibit No. 6, before or after you signed the authorization and [84] application card?

A. Signed it afterwards.

Q. Which did you sign after?

A. The contract.

Q. That is the contract between Sam Zall and yourself and certain other employees?

A. That's right.

Q. How long after you signed the authorization and application for membership cards did you sign the contract? A. Two or three days.

Trial Examiner Miller: Two or three days from that date?

The Witness: It was part of the same week.

Q. (By Mr. Law): Now, where did you sign it?

A. In the mill.

Trial Examiner Miller: In order to clarify this matter, I am going to give you a 1950 calendar, Mr. Adams.

You testified that you signed the application and authorization card for the Union on October 2. If

(Testimony of Charles Adams.)

October 2, 1950, was on a Monday, can you tell me when, in that week, you signed that contract?

The Witness: Well, I'm not sure. But it was either the fifth or the sixth.

Trial Examiner Miller: Very well.

Q. (By Mr. Law): And you say that the contract was signed in the mill? [85]

A. That's right.

Q. Was anyone present when you signed it?

A. Yes.

Q. Who else was present?

A. Everyone that signed it.

Q. Was Mr. Zall present? A. No, sir.

Q. Was his signature on it at the time you signed it? A. Yes, sir.

Q. Did you see the other employees whose names appear on it, sign it? A. Yes.

Q. Did they sign at the same time you did?

A. Yes.

Q. Now, before you signed, did you and any of the other employees in your presence have any discussion about the contract with Mr. Zall?

A. Well, first, Mr. Zall came out and read it.

Q. Did what?

A. Mr. Zall came out and read the contract over first.

Q. When was this that he came out and read it?

A. Pardon?

Q. When was it that he came out and read the contract?

A. Well, it was approximately between two and three o'clock in the afternoon. [86]

(Testimony of Charles Adams.)

Q. Was that on October fifth or sixth?

A. Fifth or sixth.

Trial Examiner Miller: When you say he read it, I am not quite sure what you mean. You mean he read it to himself, or read it aloud?

The Witness: He read it to the group of us.

Q. (By Mr. Law): Then what happened?

A. Pardon?

Q. Well, I had better ask you first, did he say anything to you about the contract before he read it?

A. Well, he brought it back and said we wrote up an agreement as far as he knew to what we wanted. And he read it over. And he asked us if we were all satisfied with it. And everyone present agreed that they were satisfied. And then he took it back to the office and then his foreman, Mr. Cotton, brought it back out after it was typed. And we signed it.

Q. Now did—have you told the entire conversation between the men and Mr. Zall on that occasion?

A. Pardon?

Q. Have you told the entire conversation between Mr. Zall and the men on the occasion of October fifth or sixth when the contract was signed. Have you told us everything that happened?

A. That date?

Q. Yes.

A. Yes. But the first contract was brought up by [87] Mr. Cotton. He wrote it out in his own handwriting, just about what plans we wanted.

Q. When was that, if you remember, that he wrote that?

(Testimony of Charles Adams.)

A. Well, it was either the day before Mr. Zall made it up, or else that following morning.

Q. Did Mr. Cotton come and speak to you about what you might want in the contract?

A. Yes, sir.

Q. What did he say to you? And what did you say to him?

A. Well, he wanted to know just what kind of an agreement that we wanted. And we told him that if he would agree to pay the same prices as General Mills, and give us our overtime when we got it, and give us all the overtime that was possible to give us, why then, we would make the agreement.

Trial Examiner Miller: When you say "We said this," how did Mr. Cotton elicit this information from you? Did he talk to you individually or in a group?

The Witness: He was with us when we first drew up the contract, and we came to work that morning, where we usually stand up front until it's time to go to work. That's when he let each and every one of us read it over. And that's when we all agreed that that was just about what plans we wanted. So then he said he would take it to Mr. Zall and see if he would OK it.

Trial Examiner Miller: Go ahead, Mr. Law. [88]

Q. (By Mr. Law): Now, at any time after you signed the authorization and application for membership card for the Union, did you and Mr. Zall have any conversation with respect to the signing of that card?

(Testimony of Charles Adams.)

A. He come around and asked us if we signed one.

Q. Did he ask you personally?

A. Personally.

Q. And when was it that he asked you that?

A. The day after I signed it.

Q. Was anyone else present at the time he asked you?

A. No, sir.

Mr. Law: No other questions.

Cross-Examination

By Mr. Fuidge:

Q. Mr. Adams, you have been employed by Mr. Adams about a year?

A. Yes.

Q. And it is true, is it not, that a couple of months before Mr. Gamble or Mr. Hanifin came up to the plant, I thought there had been some talk about, or, among the men about an increase in the pay scale?

A. Yes, sir.

Q. That's right, is it not?

A. Yes, sir.

Q. And, as a matter of fact, you men were talking it over among yourselves, talking to Mr. Cotton about it; that is it, [89] is it not?

A. Yes, sir.

Q. And that negotiation was going on for—well, about the same time that Mr. Hanifin and Mr. Gamble appeared, was it not?

A. I would say about two months before.

Q. Yes, it started about two months before, but it was subject to on-and-off conversations between the men and Cotton all that time, was it not?

(Testimony of Charles Adams.)

A. Yes, sir.

Q. And that pay scale that you mentioned that you men were talking about was to be geared somewhat to the pay scale over there at General Mills, was it not?

A. That's right.

Q. Now, sometime in early October, these two gentlemen came out to the plant, and they talked to you. Is that right?

A. The first time they came in, they talked to just Stovall.

Q. Yes. And they did not talk to you that day?

A. No, sir. Not the first day.

Q. Then sometime afterwards, they talked to you. Where was it, at the plant?

A. Yes, sir.

Q. And was it then that you signed that card that Mr. Law has shown you?

A. Not the first time. [90]

Q. How many times was it that they talked to you before you signed the card?

A. I signed the card the second time they talked to me.

Q. Was that be, say, the next day after they talked to you, or two or three days, or what?

A. Well, they didn't come in every day.

Q. Give me as best you can—let us put it this way: Do you remember about when they came in to see Mr. Stovall?

A. Well, it was, I'd say the latter part of September.

Q. All right. Then, sometime after that, they came to see you?

A. Yes.

(Testimony of Charles Adams.)

Q. Then the next time they saw you, you signed the card. Is that right? A. That's right.

Q. And the card says the 2nd of October, and I assume that is correct? A. That is correct.

Q. How far back would it be that they first talked to you?

A. I would say a week or two weeks.

Q. All right. Now, when you signed the card, Mr. Adams, were both Mr. Gamble and Mr. Hanifin there at the time? This is Mr. Gamble and this is Mr. Hanifin.

A. Yes. I was talking to Gamble, and Mr. Hanifin was talking to Mathews over by the railroad. [91]

Q. I see. Now what did Mr. Gamble tell you about the effect of signing this card?

A. You mean what the card meant?

Q. Yes.

A. Well, he told me that if we got, I think it was around thirty or forty per cent of the men to sign one of those, then he would go up and file for an election. And we'd get to vote whether we wanted union or didn't.

Q. Now, did you have any understanding when you signed this card other than this?

A. No, I didn't.

Trial Examiner Miller: Your answer was what?

The Witness: No, sir.

Q. (By Mr. Fudge): When you signed this card, did you intend to make an application to join the American Federation of Grain Millers, AFL.?

A. You mean, did I intend to?

(Testimony of Charles Adams.)

Q. Yes.

A. Well, the group of fellows—he said we would have to vote in the election. Well, at that time, I imagine if it was put up, we would have voted yes.

Q. What I am asking you is this: Did you intend to make application to join the Union when you signed this card?

A. No, sir. I just figured I was going to have to vote on it. [92]

Q. Your understanding was that this was to determine whether or not there should be an election to determine if the Union in question was to represent you. Is that right? A. Yes.

Q. Was there anything else understood by you as to what would happen if you signed this card, as to your becoming a member of the Union?

A. No.

Q. Insofar as Mr. Zall talking to you about the contract, that is the one you signed. If I understand your testimony correctly, sometime before it was actually signed by you, Cotton had a talk with you men, or you had a talk with him out by the sales desk; is that right? A. That's right.

Q. And was it him saying to you that he would get you an increase, or was it you saying, you men saying to him, "Get us an increase"?

A. Well, he knew we were pretty well riled up about the thing, so he asked us if there could be any agreement made to bring everything just about up to General Mills, and would we be in favor of it.

(Testimony of Charles Adams.)

And we said "Yes." So he put it up, to the best of his knowledge, just about what we wanted.

Q. Was that when he wrote it down on a piece of paper that you told us about?

A. Well, that was the day before that he was talking [93] about it. Then, that night, he figured it up, and wrote it down just about the way we wanted, and let us read it.

Q. I see. And that was agreeable to you?

A. We told him that that was just about what we wanted.

Q. Now, when Sam came out into the plant where you boys were, what he had was this sheet of paper that Cotton had written up; is that it?

A. No, sir.

Q. He had something else?

A. He had typed it first.

Q. I see. He had it typed and read it to you, and said, "Is that what you want"?

A. Yes, sir.

Q. He didn't sign it at that time, but went back into the office with it; is that right?

A. Well, I don't know whether he had it signed or not.

Q. Well, I am a little bit mixed up in your testimony as to what happened out there the day that you signed the contract.

Do I understand correctly, or incorrectly, you straighten me out, that before you signed the contract, Sam came out and read it to you?

A. That's right.

Q. And then went back to the office, and then

(Testimony of Charles Adams.)

came back with something in his hand, and that is the thing that you signed? [94]

A. Well, Sam didn't bring it back when we signed it.

Q. Didn't? A. He didn't.

Q. Who did? A. Cotton.

Q. Now we are straightened out.

The first time Sam came out with a piece of paper, would you say it was this one that you signed? A. I couldn't say.

Q. And in any event, he read you what is in the substance of this contract? A. Yes.

Q. Then went back to the office, and then pretty soon out comes Cotton with the contract, and you fellows signed it? A. That's right.

Q. And to your recollection, at the time you signed it, Sam's signature was on it?

A. That's right.

Q. And it was after you signed the contract that he asked you and several others, whether you had signed the union cards with Mr. Gamble and Mr. Hanifin? A. It was before.

Q. I see. All right.

Was that the extent of his inquiry, as to, for instance, "Here, Jack, did you sign the card with Gamble, or didn't you?" [95]

A. I signed the card with——

Q. I mean, is that about what Sam asked you?

A. Well, he come out and asked me, he says, "Did you sign that card?" I said "Yes." He said, "Well, you want the Union." I said, "Well, it's

(Testimony of Charles Adams.)

not me; the rest of them signed, too." He said, "Well, you and Mathews are the only ones who said you signed." So I told him, "I was there; I know that the rest of them did, too." So he went up to where Skinner was working and I imagine to ask him.

Q. Did you hear what he said to Skinner?

A. I didn't hear. [96]

* * *

SAM ZALL

a witness called by and on behalf of the respondent, having been previously sworn, was examined and further testified as follows: [116]

Direct Examination

By Mr. Fuidge:

* * *

Q. That's all.

Cross-Examination

By Mr. Law:

Q. This question doesn't necessarily require a precise and exact answer, but for how long would the Vantress Brooding and Hatchery Company remain in business if their—if they turned all their breeding stock out to scratch on the open range for their feed?

A. Well, just as long as they'd want to stay in business.

Q. Would their hens continue to lay eggs, hatch-

(Testimony of Sam Zall.)

ing eggs, suitable for export to various parts of the country? A. Yes, they would.

Q. Seriously, I do expect you have an answer on this question as a person familiar in the field: To what extent does the feeding of a properly prepared and well-balanced feed, such as [125] you manufacture, increase the laying of eggs suitable for—that is, of hatching eggs suitable for shipment? A. To what per cent?

Q. To what extent is the feeding of the breeding hens with proper feed increase their production?

A. I don't know whether I could answer that; it would be pretty hard to say. I honestly don't think I could answer that one.

Q. One thing is sure: If they're not fed at all, they would die, wouldn't they? A. No.

Q. They'll die in time, won't they?

A. They'll die in time, yes, as do we all.

Q. All right; I think we may be off on a tangent, anyway.

A. The point I wanted to say was you could take those same hens and put them out loose on the range, and they'll forage for themselves, that's my point. In other words, they'll keep alive.

Q. (By Mr. Law): It is a better arrangement, however, to feed them?

A. Well, that's questionable. Off the record, you'd save an awful lot of money on feed if you didn't have to feed them. Feeding a chicken is 60 per cent of its life in cost.

Q. I have a few other questions which, if you'd

(Testimony of Sam Zall.)

indulge me, Mr. Fuidge, on it, are not precisely related to the direct [126] examination.

They do relate to the entire case, however.

Q. Were the terms of the contract, which is General Counsel's Exhibit No. 6, actually put into effect by you as of October 2?

A. Well, they were put in effect at the time they were signed.

Q. And did you make the pay increases relate back to October 2?

A. I don't remember that. I have the records at the office. I don't remember whether it was put over to that week, or the next week.

Q. All right. Now have you ever had a collective bargaining agreement covering your employees with any Union?

A. Yes, I did have once.

Q. When was that?

A. I stand corrected on that. I did not have. I was thinking about something else.

Q. You did not file a petition, an Employers' Petition for an election with the Regional Office of the National Labor Relations Board at any time, did you?

A. No, I haven't. [127]

* * *

[Endorsed]: No. 13,031. United States Court of Appeals for the Ninth Circuit. Sam Zall, an Individual Doing Business as Sam Zall Milling Company, Petitioner, vs. National Labor Relations Board, Respondent, and National Labor Relations Board, Petitioner, vs. Sam Zall, an Individual Doing Business as Sam Zall Milling Co., Respondent. Supplemental Transcript of Record. Upon Petition to Review and Petition for Enforcement of Order of the National Labor Relations Board.

Filed Apr. 28, 1952.

PAUL P. O'BRIEN,
Clerk.

